

MINUTES OF MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
NOVEMBER 3, 2016

The Maple River Water Resource District met on November 3, 2016, at 9:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Gerald Melvin, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Kathy Grueneich, Administrative Assistant; Sean Fredricks, Attorney for the Board; Mike Opat and Lyndon Pease, Engineers for the Board; Guy Gubrud, property owner in Tower Township; and Brian Inscore, student.

**Minutes**

It was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to approve the minutes of the October 6, 2016, meeting.

**Tower Township Improvement District No. 77**

The Secretary-Treasurer reported \$44,500 has been collected for the *Petition and Bond* on Tower Township Improvement District No. 77. A motion was made by Manager Suhr and seconded by Manager Melvin to submit a cost-share request to the State Water Commission for Tower Township Improvement District No. 77 and proceed with the project, contingent upon cost-share approval. Upon roll call vote, the motion carried.

**Upper Swan Creek Channel Improvements**

Mike Opat noted the contractor, H & S Contracting, Inc., is working on the Upper Swan Creek Channel Improvements. The Board discussed Dallas Nesemeier's request for additional compensation, but concurred the *Permanent Easement* adequately compensated the reduction in the value of his property.

**Swan Creek – slide west of State Highway 18**

As recommended by the Water Resource Engineer, a motion was made by Manager Suhr and seconded by Manager Melvin to hire Northern Technologies Inc. to do geotech work on Swan Creek, west of State Highway 18. Upon roll call vote, the motion carried unanimously.

**Complaint for Water-Related Issues from Pifer Land Management, on behalf of Feder Properties, against Donald and Ruth Garnas for a tiling project in the SE 1/4 of Section 27 in Lake Township**

The Board instructed the Secretary-Treasurer to send a copy of the *Complaint for Water-Related Issues* from Pifer Land Management, on behalf of Feder Properties, against Donald and Ruth Garnas for a tiling project in the SE 1/4 of Section 27 in Lake Township, to Mr. and Mrs. Garnas, advising them a permit is needed for tiling 80 acres or more. A copy of the *Application to Install a Subsurface Drain* form will be included.

**Drain #14 – design concept relating to the Metro Flood Diversion Project**

Lyndon Pease reviewed the design concept of Drain #14 relating to the Metro Flood Diversion Project. He said the planning team wanted input and recommendations from the Board. Channel location, channel depth, and roadway crossing improvements were discussed. Houston-Moore Group, LLC will continue working on the matter.

**Application for Surface Drain No. 4801 for David Ratchenski in the N 1/2 of Section 8 in Durbin Township**

The Board reviewed information from the State Engineer regarding *Application for Surface Drain No. 4801* for Applicant David Ratchenski. Under the application, Applicant seeks a permit for previously constructed channel improvements to Wheatland Channel, a tributary to Swan Creek, in the N 1/2 of Section 8 in Durbin Township. The permitted drain will include approximately 6,000 feet of channel improvements; a bottom width of anywhere from 8 feet to a maximum of 10 feet; 3:1 side slopes; and a maximum cut of up to 1.5 feet. The channel improvements will run the full length of the existing channel in the N 1/2 of Section 8 until reaching the east boundary of the N 1/2 of Section 8.

According to records on file with the Cass County Recorder's office, David Ratchenski owns all of the N 1/2 of Section 8 with the exception of an 8.244 acre tract owned by Donald and Veronica Gill; the channel improvements are located on property owned by both Ratchenski and the Gills.

The Board approved responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code prepared by Mike Opat. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicant to obtain an easement from Donald and Veronica Gill to construct, operate, and maintain the project on their property. The Board determined that, in light of these measures, the project will not result in any other adverse impacts to any other parties.

It was moved by Manager Suhr and seconded by Manager Melvin to approve *Application for Surface Drain No. 4801* for David Ratchenski, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain and record (with the Cass County Recorder's office) an easement (and not just written consent) from the owners of the 8.244 acre parcel along the north boundary of the N 1/2 of Section 8, Cass

County Parcel No. 34-0000-03628-000, in Durbin Township, Cass County, North Dakota, for purposes of constructing, operating, and maintaining a surface drain;

2) That Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including a drain length of 6,000 feet; bottom width from 8 feet to a maximum of 10 feet; 3:1 side slopes; and a maximum cut of 1.5 feet;

3) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain;

4) That Applicant notify the Maple River Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; and

5) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

**Application to Install a Subsurface Drain No. 20165 for Darrell Logemann in Section 15 of Leonard Township**

Before the Board reviewed the tile application from Darrell Logemann, Chairman Rodger Olson indicated he may have a conflict since he leases and farms Mr. Logemann's property in Section 15 of Leonard Township. Sean Fredricks explained that Section 44-04-22 of the North Dakota Century Code provides the relevant standard for conflict of interest situations. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

Mr. Fredricks indicated the North Dakota Supreme Court and the Attorney General's Office have taken a narrow view of situations where a public official can abstain from participating in a matter. A public official must have a "direct and substantial personal or pecuniary interest" in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating. The North Dakota Supreme Court adopted a "rule of necessity" that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. In this case, Chairman Olson will directly benefit from the tile project proposed under the tile application. By statute, Mr. Fredricks indicated the proposed tile project and permit application would raise a “direct and substantial personal or pecuniary interest” conflict under Section 44-04-22 for Chairman Olson. Mr. Fredricks indicated that, with that in mind, he recommended Chairman Olson not “participate in or vote on” issues related to this permit application or this project. The remainder of the Board voted unanimously to declare a conflict for Chairman Olson and to preclude Chairman Olson’s participation in or voting on any items regarding this permit application or this project.

The remainder of the Board reviewed *Application to Install a Subsurface Drain No. 20165* dated October 27, 2016, for Darrell Logemann. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the “statewide” elements, therefore; the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the Office of the State Engineer to consider and approve). Under the application, Applicant seeks to install a tile system comprising 585 acres in Section 15 in Leonard Township, Cass County, North Dakota. The project will include two gravity outlets; the first gravity outlet in the N 1/2 of Section 15 will discharge directly into Cass County Drain #15; the Maple River Water Resource District owns and operates Drain #15. The second gravity outlet in the S 1/2 of Section 15 will discharge directly into a natural waterway.

Mr. Opat recommended that the Board require Applicant to install and maintain erosion protection at both outlets to protect Drain #15 and to protect the natural waterway in the S 1/2 of Section 15. The Board will require Applicant to obtain a *Utility Permit* regarding the discharge into Drain #15. Because the proposed project will discharge directly into Drain #15 and into a natural waterway, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section § 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners.

According to records on file with the Cass County Recorder’s Office, Darrell Logemann and Coe Leta F. Logemann own all of Section 15 where Applicant intends to install the tile project.

It was moved by Manager Suhr and seconded by Manager Melvin to approve a *Utility Permit* regarding the outlet into Drain #15, and to approve *Application to Install a Subsurface Drain No. 20165* dated October 27, 2016, for Darrell Logemann regarding Section 15 in Leonard Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant provide and maintain adequate erosion protection at any and all outlets into Drain #15 (Applicant is solely responsible for any damages to Drain #15 as a result of the tile project), and at any and all outlets into the natural waterway in the S 1/2 of Section 15;

- 3) That Applicant notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) That any time water is breaking out of Drain #15 downstream of the tile discharge into Drain #15, Applicant must turn off any pumps, or otherwise close the tile system;
- 5) That Applicant notify the Maple River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 6) That Applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Maple River Water Resource District;
- 7) That Applicant obtain an approved *Utility Permit* from the Maple River Water Resource District regarding any and all outlets into Drain #15; and
- 8) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, Manager Suhr and Manager Melvin voted in favor of the motion; Chairman Olson abstained. The motion carried.

**Utility Permit for Cass County Electric Cooperative to install underground primary electric cable under Drain #14 in the SE 1/4 of Section 34 in Raymond Township**

It was moved by Manager Melvin and seconded by Manager Suhr to approve the *Utility Permit* for Cass County Electric Cooperative to install underground primary electric cable under Drain #15 in the SE 1/4 of Section 34 in Raymond Township, subject to conditions provided by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

**Animal Damage Control – beaver dam between Sections 25 and 36 in Howes Township**

It was moved by Manager Suhr and seconded by Manager Melvin to hire animal damage control to remove beaver and the beaver dam between Sections 25 and 36 in Howes Township, due to the potential impact it could have at Embden Dam. Upon roll call vote, the motion carried unanimously.

**Application for TJ Acres Subdivision in the NE 1/4 of Section 20 in Davenport Township**

It was moved by Manager Melvin and seconded by Manager Suhr to direct the Secretary-Treasurer to submit comment regarding the application for TJ Acres Subdivision in the NE 1/4 of Section 20 in Davenport Township, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

### **Bills**

It was moved by Manager Suhr and seconded by Manager Melvin to approve the payment of Checks #5596 through #5608, and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Suhr and Melvin. The Chairman declared the motion passed.

### **Drain #34**

Mr. Opat reported Cass County is proposing to replace the wooden box culvert on Drain #34, one mile north of State Highway 46, with a smaller pipe that would meet current standards and codes. The Board provided input on the project design.

### **Lynchburg-Buffalo Project No. 2016-01**

Mr. Opat discussed design options for Lynchburg-Buffalo Project No. 2016-01. He will prepare a project budget to bring to the next meeting.

### **Drain #14 – slides in Sections 18 and 19 of Warren Township**

Mr. Opat reported that foliage needs to be burned off in Drain #14 before survey work can be completed. A motion was made by Manager Suhr and seconded by Manager Melvin to hire American Enterprises, Inc. to do a controlled burn of approximately 2.5 miles of Drain #14 in the area of Sections 18 and 19 of Warren Township in preparation for survey work needed. Upon roll call vote, the motion carried unanimously.

### **Adjournment**

There being no further business for the Board to consider, it was moved by Manager Suhr, seconded by Manager Melvin and unanimously carried to adjourn the meeting.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer